

Introduction

The FCA has published a final notice imposing a fine of £539,800 on Reckitt Benckiser Group Plc ("RB") for inadequate systems and controls to monitor share dealing by two of its senior executives in its own shares. The decision is significant in that the FCA has stated that it expects all listed companies to learn the lessons from this case and to ensure they have the right controls and training in place.

At the outset it is worth noting that (i) none of the dealings in the case took place on the basis of inside information; (ii) the breaches were not deliberate or reckless; (iii) RB did not benefit from the misconduct and (iv) no financial crime took place. It is a salutary reminder for listed companies to proactively ensure compliance with the regulations.

Background Facts

Throughout the relevant period, RB held a Premium Listing and was therefore subject to the Listing Rules and the Disclosure and Transparency Rules. All of RB's executive committee members were designated as Persons Discharging Managerial Responsibilities ("PDMRs") and therefore subject to the Model Code.

RB adopted the Model Code as its internal share dealing policy and required its executives to seek clearance from the CEO before dealing in its shares. RB's Insider Information Policy also stated that the Model Code applied to its executives, including its PDMRs, and required them to complete an "Intention to Deal" form requesting clearance to deal and to notify RB when a dealing had taken place. It also prohibited dealing during close periods.

The company secretary provided the PDMRs with a copy of the Model Code and an explanatory document. The Model Code was also available on RB's intranet and via its external share plan administrator's website. All employees (including PDMRs) were obliged to certify annually that they had reviewed and would adhere to RB's Code of Conduct. The Code of Conduct referred to insider trading and included a prohibition on employees trading on the basis of inside information relating to RB.

However, RB failed to provide training on, and did not proactively remind the PDMRs of their obligations under, the Model Code and the DTRs. Instead, it relied on the self-certification process and the knowledge and experience of its PDMRs.

The PDMRs share dealing was conducted largely through RB's share plan administrator who notified RB that a dealing had taken place, rather than the relevant PDMR advising RB personally.

Dealings

In the case of one of the PDMRs, a third party custodian of his shares advised him that a credit facility was available to him and, unbeknown to him, it used his shares as security for the facility. That director was also unaware of the fact that using his shares as security constituted dealing under the Model Code. The director should have obtained clearance in advance and notified RB afterwards so that RB could notify the market as required.

As regards the second director, he had sold RB shares unbeknown to RB such that RB did not make the required announcement to the market at the relevant time. The director also claimed that he sought and received oral clearance.

When RB became aware of the dealings it immediately notified the UKLA but failed to notify the market within the time required by the DTR. Instead, RB carried out a reconciliation exercise to ascertain if there had been any other breaches. When RB did notify the market it failed to disclose some of the information required namely, the precise dates, place and price of the dealings and the date on which it became aware of them.

FCA Findings

The FCA took the view that RB failed to comply with Listing Rule 9.2.8 – that a listed company must require its PDMRs to comply with the Model Code and must require them to take all proper and reasonable steps to secure their compliance. The FCA stated that it is "reasonable to expect a listed company to take proactive steps to comply with LR9.2.8R and to have in place procedures, systems and controls that serve to facilitate and encourage the compliance of its PDMRs with the Model Code which enable the company to identify and deal promptly with instances of non-compliance."

PDMRs were able to deal without prior clearance and RB did not on any formal or regular basis emphasise or provide training on the importance of compliance with the Model Code.

RB also breached Listing Principles 1 and 2 and DTR 3.1.4 and 3.1.5 in respect of the inadequate notifications to the market.

Lessons to be Learnt

- Clearly identify who are PDMRs
- Take steps to proactively comply with LR 9.2.8R
- Have procedures, systems and controls that facilitate and encourage PDMRs to comply with the Model Code and to identify and promptly deal with any breaches eg annual certification; making it a term of the employment contract; send regular reminder letters; obtain contact details where shares are held by a nominee or custodian; require annual evidence of PDMRs shareholdings and reconcile; require confirmation after dividend payments whether any shares were purchased; put “VIP” markers against PDMRs’ shareholdings to detect any changes
- Ensure regular and formal training for PDMRs on their obligations
- Regularly review the PDMR share dealing policy and mitigate any risks
- Maintain up to date records of requests and clearances given

How Squire Patton Boggs Can Help

We would be pleased to discuss with you in more detail any of the matters raised in this update.

Squire Patton Boggs

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The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations nor should they be considered a substitute for taking legal advice.

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